

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 824
CASE NO. 96-13M
(PUD MODIFICATION AT 5333 WISCONSIN AVENUE, N.W.)
JULY 14, 1997

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on March 20, 1997. At the hearing, the Zoning Commission considered an application from McCaffery Interests, Inc. (the "Applicant") to modify an approved planned unit development (PUD) for property at premises 5333 Wisconsin Avenue, N.W., pursuant to Chapter 24, respectively, of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on November 15, 1996, requested modification to a previously approved planned unit development (PUD) for property at premises 5333 Wisconsin Avenue, N.W., Lot 30 in Square 1661. The Applicant consists of McCaffery Interests, Inc. (the "commercial developer") and Eakin/Youngentob Associates, Inc. (the "residential developer").
2. The PUD site is comprised of approximately 95,363 square feet of land area and is located midway in Square 1661 which is bounded by Wisconsin and Western Avenues, Military Road and Jenifer and 43rd Streets, N.W. The site is an irregular "T-shaped" parcel with frontage of approximately 490 feet on 43rd Street and approximately 195 feet on Wisconsin Avenue.
3. The Generalized Land-Use Map of the Comprehensive Plan shows Square 1661 to be designated in a mixed-use, medium-density residential category and medium density commercial category. The subject area is also identified as a regional center. The area is no longer designated as a "development opportunity area".
4. The subject site is designated as a housing opportunity area in addition to the medium-density residential classification. The Comprehensive Plan includes low and moderate density housing areas in its definition of the medium-density residential category. Thus, the medium-density residential classification specifically allows for a range

of residential types, including the townhome configuration of the project.

5. Under Order No. 528 the Zoning Commission granted final approval in 1986 to a PUD for Lot 30 and approved the rezoning of the site from R-5-B and C-2-B to R-5-C (currently R-5-D) and C-3-B, with portions of a public street and alleys to be closed.
6. The R-5-D District permits matter-of-right medium/high density development of general residential uses, including single-family dwellings, flats and apartment buildings, to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 3.5, and a maximum lot occupancy of seventy-five percent.
7. The C-3-B District permits matter-of-right major business and employment centers of medium density development, including office, retail, housing and mixed uses to a maximum height of seventy feet/six stories, a maximum floor area ratio (FAR) of 5.0 for residential and 4.0 for other permitted uses, and a maximum lot occupancy of one hundred percent.
8. In Order No. 528, the Zoning Commission approved the construction of a mixed-use development consisting of residential apartments, general office and retail components. The residential portion of the project fronted on 43rd Street and the office and retail components fronted on Wisconsin Avenue. The development was not to include movie theaters and the residential component was to include not less than 80 nor more than 85 apartment units. The Order prohibited any professional office use in the residential component of the project.
9. The floor area ratio ("FAR") of the approved project was not to exceed 4.72, exclusive of atria and the commercial FAR was not to exceed 3.80, exclusive of atria. Approximately 2.82 FAR was office and 0.98 FAR was retail. The FAR of the residential component of the project was 0.92.
10. The height of the residential portion of the approved project was not to exceed forty and forty-eight feet along 43rd Street and the height of the commercial portion was not to exceed 110 feet.

11. The Order required a minimum of 550 below-grade parking spaces (including one parking space for each apartment unit), five loading berths and three service delivery spaces.
12. The lot occupancy of the approved project was not to exceed 92 percent.
13. Pursuant to 11 DCMR 2408.10 and by Z.C. Order No. 528-A dated June 11, 1990, the Zoning Commission extended the validity of Z.C. Order No. 528 for a period of two years; that was until May 8, 1991, for filing an application for a building permit, and for construction to start not later than May 8, 1992.
14. By Zoning Commission Order No. 528-B, dated June 8, 1992, the Zoning Commission further extended the validity of Z.C. Order Nos. 528 and 528-A for two years, and required the filing of a building permit application by May 8, 1993 with construction to commence not later than May 8, 1994.
15. By Zoning Commission Order No. 528-C, dated June 13, 1994, the Zoning Commission further extended the validity of Z.C. Order Nos. 528, 528-A and 528-B for two years, and required the filing of an application for a building permit by May 8, 1995 with construction to commence not later than May 8, 1996.
16. By Zoning Commission Order No. 528-D, dated June 10, 1996, the Zoning Commission further extended the validity of Z.C. Order Nos. 528, 528-A, 528-B and 528-C for two years, and required the filing of an application for a building permit by May 8, 1997 with construction to commence not later than May 8, 1998.
17. The project approved in Z.C. Order Nos. 528, 528-A, 528-B, 528-C and 528-D was originally designed and approved in conjunction with the PUDs immediately to the north (Zoning Commission Order No. 517 at 5335 Wisconsin Avenue, N.W., known as Chevy Chase Pavilion), and to the south (Zoning Commission Order No. 519 at 5301 Wisconsin Avenue, N.W., known as Chevy Chase Plaza) in the same square.
18. The three PUDs were designed and approved to provide certain joint public amenities including a through-block connector and a below-grade connection to the Friendship Heights Metro station.

19. The instant application proposes to modify the project as originally approved in Z.C. Order No. 528 to reflect the present and projected retail, office and residential markets in the Friendship Heights area.
20. The residential component of the project will no longer consist of a solid, unbroken line of apartments along 43rd Street. In its place, 29 townhomes will be constructed as a buffer between the commercial area of Wisconsin Avenue and the residential neighborhood east of 43rd Street. The townhomes will consist of approximately 83,000 square feet of gross floor area with a residential FAR of 0.87. The height of the townhomes will be approximately 45 feet to the top of the roof.
21. The commercial component of the project consists of two to three stories of distinctive retail development along Wisconsin Avenue. The application does not include any office development and the orientation of the retail component has been changed from interior/mall type space to street front retail space, with each retail tenant having its own identity and street entrance.
22. The retail component consists of 94,400 square feet of gross floor area and has a commercial FAR of 0.99. The maximum height of the buildings along Wisconsin Avenue will be 54 feet.
23. The project will include a total of approximately 177,400 square feet of gross floor area, for a total FAR of 1.86. The lot occupancy of the project will be 70 percent.
24. As originally submitted, the project did not include any parking for the retail component of the project. After receiving comments from the surrounding community, the Department of Public Works, the Office of Planning, and the proposed retail tenants in the project, the Applicant submitted revised drawings in its March 6, 1997 Pre-Hearing Statement to the Zoning Commission which included one level of below-grade parking with space for approximately 125 parking spaces.
25. The residential portion of the project includes 58 parking spaces as each townhome includes parking for two cars.

26. The public benefits and project amenities of the project include: the unique and vibrant design of the commercial component which will enliven the area and increase pedestrian traffic; the creation of a sensible buffer between the commercial area of Wisconsin Avenue and the residential neighborhood east of 43rd Street; the creation of 29 townhomes in the District which will provide significant additional tax revenues in the form of property, income, sales, use and employment taxes; the completion of the through-block connector; and the completion of the pedestrian connection to the Friendship Heights Metro station.
27. At the public hearing, the Applicant filed an Agreement that was reached with the Friendship Neighborhood Coalition ("FNC") into the record. Pursuant to the Applicant amending its modification application to incorporate the terms of the Agreement, the FNC agreed to support the project
28. At the public hearing, the Applicant's architect addressed the project's compliance with the conditions and the spirit of the approved PUD. The project retains the through-block connector through the square for use by service vehicles serving the commercial component of the project. The through-block connector returns the alley to the square and provides a buffer that separates the retail from the residential components of the project. The project also completes the pedestrian connection from all three developments in Square 1661 to the Friendship Heights Metro Station. Finally, the creation of the one level of below-grade parking in the project allows for the connection of all three parking garages in the Square.
29. At the public hearing, the Applicant requested the flexibility to make minor adjustments to the project. Such adjustments would include changes in the facade, window, and cornice detailing of the project.
30. At the public hearing, the Applicant's traffic engineer stated that the proposed project would not adversely affect traffic patterns in the area. In addition, the traffic engineer stated that there is no need to widen Wisconsin Avenue, as was discussed in the approved PUD, as the traffic volumes on Wisconsin Avenue are presently lower than they were when the original PUD was approved. The traffic

31. engineer stated the Department of Public Works has concurred with the conclusion that there is no need to widen Wisconsin Avenue.
31. The applicant's traffic engineer also stated that the addition of approximately 125 parking spaces to the existing supply of excess parking spaces provided by Chevy Chase Pavilion, Chevy Chase Plaza and the Mazza Gallerie was more than adequate to meet the demand for parking in the area. The project would not include the two additional curb cuts on Wisconsin Avenue, as required by the approved PUD, as they are no longer needed due to the revisions in the vehicular circulation plan of Square 1661.
32. At the public hearing, the Applicant's land planner and land use expert submitted written testimony, marked as Exhibit 46, and stated that the uses included in this project are consistent with the site's designation as a Regional Center. In addition, viewing the development of Square 1661 in its entirety, the project helps provide a good overall mix of uses between office, retail, residential and child care.
33. The District of Columbia Office of Planning ("OP"), by memorandum dated March 18, 1997, and by testimony presented at the public hearing, concluded that the project is consistent with the elements of the Comprehensive Plan and the Comprehensive Plan map designation for the site. At the public hearing, OP's representative addressed the benefits of the project, including the ability of the retail spaces to expand vertically providing more grand and entertainment/type retail space, compared to the approved PUD.
34. In regard to the lower density of the project, OP concluded that the reduction of density in this case makes sense under the circumstances that the city faces and the benefits that the project provides. In its memorandum to the Zoning Commission, OP indicated that it was informed by the Department of Public Works that the widening of Wisconsin Avenue is no longer desired.
35. The District of Columbia Department of Public Works (DPW) by memorandum dated March 17, 1997, stated that the 125 parking spaces for the visitors to the retail component of the project is sufficient for the project. In addition, DPW agreed that the project should not require additional curb cuts on Wisconsin Avenue as was required in the approved

PUD. DPW also determined that the number of loading berths is adequate for the project. Finally, DPW determined that peak traffic generation will be less than it would have been with the office development contemplated in the approved PUD.

36. The District of Columbia Office of Economic Development (DCOED), by a letter dated March 14, 1997, supported the project because of its long-term economic benefits to the District.
37. Advisory Neighborhood Commission ("ANC") 3E, a party to the proceeding, by letter dated December 31, 1996, supported the project in advance of the inclusion of a level of below-grade parking.
38. ANC 3G, by letter dated February 26, 1997, and by testimony presented at the public hearing, indicated no objection to the project based on the addition of the below-grade level of parking, providing approximately 125 parking spaces for visitors to the retail portion of the project.
39. Cornerstone Real Estate Advisors, Inc. (the owner of Chevy Chase Plaza (the "Plaza")), a party to the proceeding, by letter dated March 4, 1997 as supplemented by a letter dated March 12, 1997, and by statement at the public hearing, indicated its support for the project. The Plaza is the development immediately to the south of the subject site. However, the Plaza requested that the record be left open so that the Plaza's architect and the Applicant's architect could coordinate architectural treatment and ramping issues with regard to the pedestrian connection to the Metro station.
40. The FNC, a party in the proceedings, by letter dated March 6, 1997, and by testimony at the public hearing, supported the PUD modification application as modified to incorporate the terms and conditions of the Agreement between the FNC and the developers. The FNC requested that the record be left open so that the FNC and the developers may submit the executed Construction Agreement into the record of this case.
41. The Citizens Coordinating Committee on Friendship Heights (CCCCFH), a party in the proceedings, by letter dated March 6, 1997, by written submission (marked as Exhibit 47) and testimony at the public hearing, supported the project.

Other testimony suggested that the Zoning Commission review PUD Order No. 528 to determine which conditions, prohibitions and provisions should be retained particularly as they relate to the prohibitions against movies, professional offices, pedestrian bridges, and the implementation of a transportation management plans and the amenities package.

42. S.I. Chevy Chase, (the owner of Chevy Chase Pavilion) a party to the proceeding, by letter dated March 7, 1997, by written submission (marked as Exhibit 51) and testimony at the public hearing, indicated its support for the project. The Pavilion is the development immediately to the north of the subject site. Due to the changes in the circulation plan for Square 1661, S.I. Chevy Chase addressed the need to maintain an entrance and exit on Military Road for vehicles entering and exiting the Chevy Chase Pavilion. The Zoning Commission stated that this was outside the scope of the subject application and should be addressed in a modification to the Chevy Chase Pavilion Order.
43. Muriel Feldman, an individual, by written submission and testimony at the public hearing, indicated her opposition to the project. The reasons for Ms. Feldman's opposition to the project include: the lack of discussion as to who will pay for certain joint amenities (such as the widening of Wisconsin Avenue), and the proposed signage of the project. In addition, Ms. Feldman voiced concern about the manner in which the Order for the PUD Modification will be drafted. She also requested the Zoning Commission to review Z.C. Order No. 528 to ensure enforcement of the provisions contained therein.
44. The Chevy Chase Plaza Children's Center (the "Children's Center"), an organization, by written submission and testimony at the public hearing, indicated its opposition to the project. Their opposition to the project was based on the failure to provide a park in Square 1661 on its property with playground equipment for the Children's Center.
45. In addition, the Children's Center raised issues regarding the dust and debris caused by the construction, the health and safety of the children enrolled in the day care program, and potential signage and short-term parking for the families of the Children's Center. Finally, the Children's Center raised the issue of placing speed bumps on 43rd Street to decrease the speed of vehicles on that street.

46. The Applicant stated that there was no requirement in the original PUD approval for this property to provide play space for the Children's Center. The park area with playground equipment was required to be provided by the Chevy Chase Pavilion pursuant to its PUD Order.
47. In addition, the residential developer stated that the townhomes will be owned in fee simple with a homeowners association owning the common areas. If the play area were placed on the residential portion of the project the liability would be placed on the homeowners association. Such liability would adversely impact the ability of the homeowners association to obtain insurance, make the homeowner's fees unmarketable, and would have a detrimental impact on the ability of the residential developer to market the townhomes.
48. Carolyn Callahan, an individual, testified at the public hearing and indicated her support of the project.
49. At the close of the public hearing, the record of the case was left open for two submissions. The first submission was to address the architectural treatment and ramping issues in the pedestrian connection to the Metro Station. This submission was to include evidence of the discussions of these issues by the architects for the Plaza and the Applicant. The second submission was an executed Construction Agreement between the Developers and the FNC. Both of these submissions were made to the Zoning Commission on April 2, 1997.
50. The American University Park Citizens Association submitted a letter dated March 18, 1997 to the Zoning Commission, expressing its opposition to the project unless a parking structure was provided for the commercial component of the project.
51. ANC 3G submitted a letter to the Zoning Commission, dated March 26, 1997, in support of the Pavilion's request to permit vehicles to exit and enter the Pavilion parking garage from Military Road.
52. The Plaza, submitted a letter dated April 2, 1997, which addressed the consistency of building materials and the ramping connections to be used in the pedestrian connection to the Metro station between the two developments, and the potential blocking of the second floor window of the Plaza

by the project. The Plaza advised the Zoning Commission that consensus had been reached with regard to the pedestrian connection issues. However, no resolution of the second floor window issue had yet occurred between the Plaza and the applicant.

53. The Plaza, in its letter dated April 2, 1997, asked that the Zoning Commission condition its approval of the Applicant's project on "those steps it (the Zoning Commission) deems appropriate to address the adverse impact the proposed modifications will have on our client's use and enjoyment of its building."
54. By letter dated April 9, 1997, the Applicant indicated that it had reached agreement with the Plaza regarding the second floor window. The Applicant will, at its expense, block the window and make necessary improvements to the interior of the Plaza. Thus, the Plaza supports the project without conditions. Given the Plaza's support for the project, and the withdrawal of its request, there is no reason for the Commission to impose a condition on the Applicant's project to prevent the obstruction of a single window on the second floor of the Plaza.
55. The Commission finds that the proposed retail and residential uses are appropriate for the site and consistent with the objectives of the Comprehensive Plan of the District of Columbia, and the designation of this site as a Regional Center and a housing opportunity area.
56. The Commission finds that the Applicant has met the intent and purpose of the Zoning Regulations, the PUD process, and the approved PUD.
57. The Commission concurs with the recommendations of OP, DPW, DCOED, ANC 3E and ANC 3G, and other parties, that the PUD modification application should be approved.
58. The Commission finds that approval of this PUD Modification application will finalize the development of Square 1661 and allow for the completion of the through-block connector, and the pedestrian connection to the Metro station.
59. The Commission finds that the proposed reduction in commercial FAR is appropriately scaled due to the high vacancy rates of office development in this part of the District,

the emergence of the Friendship Heights area as a regional retail market, and the appropriateness of street front retail in the area, as supported by OP.

60. The Commission finds the retail component of the project to be an exciting addition to the streetscape of Friendship Heights that will increase pedestrian traffic in the area. The townhomes in the residential portion of the project provide a more appropriate buffer between the commercial area of Wisconsin Avenue and the residential neighborhood east of 43rd Street, than was approved in the original PUD.
61. The Commission appreciates the efforts of the Applicant to address concerns of the community, and hereby incorporates the terms and conditions of the Agreement and Construction Agreement between the developers and the FNC, Exhibits 45 and 58, respectively, into this Order.
62. The Commission finds that the Applicant has been responsive to issues raised by the owners of the other developments in Square 1661 with regard to the design and architectural treatment of the pedestrian connection to the Metro station and the circulation of vehicles among the three parking garages in the Square. The Commission encourages the continued dialogue among the three owners in the Square to resolve any issues which may arise. The Commission recognizes the need to provide the owners flexibility to revise the plans for the pedestrian connection to ensure proper coordination and development of the pedestrian connection; provided however that the passageway is lively, well lit and secure.
63. The Commission finds that the provision of approximately 125 parking spaces for the commercial component of the project and 58 parking spaces for the residential component is sufficient and/or acceptable to meet the expected parking demand of the project.
64. The Commission agrees with the Applicant and DPW that there is no need for additional curb cuts on Wisconsin Avenue in front of the subject site as required by the approved PUD. In addition, the Commission concurs with the assessment of DPW that the widening of Wisconsin Avenue is not feasible nor required due to the decrease in traffic volume on Wisconsin Avenue since the approval of the original PUD.
65. The Commission agrees that the Applicant should be provided the necessary flexibility to make minor adjustments to the

project. The Applicant will be required to construct a project that is in accordance with the plans submitted to the Zoning Commission marked as Exhibit 28.

66. The Commission agrees that it is the obligation of the Chevy Chase Pavilion to provide a park area with playground equipment for the Children's Center, and not the obligation of the Applicant. Requiring the residential developer, and ultimately the homeowners association, to incur the liability for the play area will adversely affect the ability to market the townhomes and will have a detrimental impact on the project as a whole.
67. The proposed action of the Zoning Commission to approve the application with conditions, was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC by report dated June 18, 1997 found the proposed PUD modification would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interest of the District of Columbia.
2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned commercial developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter of right development.
3. The development of the project is compatible with District wide and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.

5. The application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community but will enhance the neighborhood and assure neighborhood stability.
6. The approval of this application will promote orderly development, in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map.
7. The Zoning Commission has accorded to the Advisory Neighborhood Commissions, 3E and 3G, the "great weight" to which they are entitled.
8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for modification of a previously approved PUD for property at premises 5333 Wisconsin Avenue, N.W., Lot 30, in Square 1661. This modification approval incorporates all of the conditions for development of the subject property and thereby supersedes the Approval under Order No. 528.

The approval of this modification to the PUD and the development of the site is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in substantial accordance with the plans prepared by the architectural firms of Antunovich Associates and the Lessard Architectural Group, marked as Exhibit 4, Exhibit 28 and Exhibit 58, as modified by the guidelines, conditions and standards.
2. The project shall be a mixed-use development consisting of retail use along Wisconsin Avenue, N.W. and residential townhouses along 43rd Street, N.W. There shall be no movie theaters in the project.
3. The floor area ratio (FAR) of the project shall not exceed 1.86. The commercial FAR shall not exceed .99 and the residential FAR shall not exceed .87, as shown on the plans marked as Exhibits 4 and 28.

4. The height of the residential component of the project shall not exceed approximately 45 feet to the mid-point of the roof as shown on the plans marked as Exhibits 4 and 28. The height of the retail component of the project shall not exceed approximately 54 feet to the mid-point of the roof as shown on Exhibits 4 and 28.
5. The applicant will provide a 15 foot setback at the north property line above the third floor for the commercial portion of the project, as shown on Exhibits 4 and 28.
6. The lot occupancy of the project shall not exceed 70 percent, as shown on Exhibits 4 and 28.
7. There shall be no vehicular access to the commercial component of the project from 43rd Street. Access to the residential component of the project will be from 43rd Street.
8. Landscaping and paving shall be in accordance with plans marked as Exhibits 4 and 28. Streetscape design shall be in accordance with Department of Public Works standards and as shown on the plans marked as Exhibits 4 and 28.
9. All utility lines required for the project shall be placed underground to complete underground utility service for Square 1661.
10. The Applicant shall coordinate with the other owners in Square 1661 to develop a unified vehicular circulation plan for the commercial portions of Square 1661 as shown on the plans marked as Exhibits 4 and 28. The vehicular circulation plan shall consist of: a) a through-block connector which shall provide loading access for deliveries to the commercial component of the project (the through-block connector shall be entered from Military Road and vehicles shall proceed through the Square to exit onto Jenifer Street); b) a vehicular connection between the three parking garages in Square 1661 that would allow a vehicle to enter an existing garage entrance and proceed through the three parking garages in the Square; and c) the continuation of an entrance and exit on Military Road for vehicles entering and exiting the Chevy Chase Pavillion.
11. The project shall provide one level of below-grade parking, with approximately 125 parking spaces, for the visitors to the retail component of the project. Parking shall be

provided for the commercial component of the project as generally shown on the plans marked as Exhibit 28. The project shall also include three loading berths as shown on the plans marked as Exhibit 28. Fifty-eight parking spaces shall be provided for the townhomes on the residential portion of the project.

12. Truck loading activity for the PUD site shall be in accordance with the truck management plan generally described in the record of Case No. 86-21F/85-9P and marked as part of Exhibit No. 5. Specifically, there shall be no loading activity, including arrivals, departures, or maneuvering, at the PUD loading facility from 7:00 a.m. to 9:00 a.m. or from 4:30 p.m. to 6:00 p.m.
13. The developer of the residential component of the project shall be permitted to place a sales trailer on the residential portion of the property throughout the period of construction on the property.
14. The commercial portion of the project shall include a below-grade pedestrian connection for Metrorail users to properties to the north and south of the subject PUD site, substantially in accordance with the pedestrian connection as shown on the plans marked as Exhibits 28 and 58. The applicant shall have the flexibility to revise the plans for the pedestrian connection to resolve problems which may arise during the construction of the connection with the other developments in Square 1661; provided that the passageway is lively, well lit and secure.
15. Pedestrian circulation through the project shall be provided as shown on the plans marked as Exhibits 28 and 58.
16. There shall be no pedestrian bridges over Wisconsin Avenue from the subject site to Mazza Gallerie.
17. The development of this project shall be in accordance with the Agreement between McCaffery Interests, Inc. and Eakin/Youngentob Associates (the "Developers") and the Friendship Neighborhood Coalition ("FNC"), marked as Exhibit 45.
18. The applicant shall implement the agreement with the Department of Employment Services filed in the record as Exhibit No. 5 in the record of Z.C. Case No. 86-21F/85-9P and as required in Z.C. Order No. 528..

19. The applicant shall implement the Memorandum of Understanding with the Minority Business Opportunity Commission ("MBOC"), as amended by the MBOC and filed as a part of Exhibit No. 5, in Z.C. Case No. 85-21F/85-9P and as required by Z.C. Order No. 528..
20. The project shall include the amenities package proposed as part of this application, as described in Exhibit No. 5 of the record in Z.C. Case No. 86-21F/85-9P and as required by Z.C. Order No. 528.
21. Consistent with the Agreement marked as Exhibit No. 45, to the extent that ownership of the residential portion and commercial portion of the project is separated, each respective owner shall only be responsible for their portion's compliance with the terms of this Order. Violations by one such owner shall not invalidate or impair the approvals granted hereunder with respect to the nonviolating owner and its portion of the project.
22. All construction activity on the subject PUD site shall be in accordance with the Construction Agreement entered into by the developers and FNC, marked as Exhibit 58.
23. Pursuant to the Memorandum of Understanding entered into by the developer of the originally approved PUD for this site and the other developers in Square 1661 (filed in the record of the approved PUD), all three property owners in Square 1661 shall cooperate with each other in a good faith effort in resolving any issues which arise with regard to the graphics and architectural treatment of the through-block connector and the pedestrian connection to Metrorail, signage for the parking garage, and/or the operation of the below-grade transportation system.
24. The exhaust requirement of the garage shall be conducted in full compliance with all applicable District of Columbia Code requirements. Consistent with those requirements, the exhaust discharge for the garage shall be located at a minimum height of 20 feet above grade.
25. The applicant shall be granted flexibility as follows:
 - a) To vary the location and design of all interior components of the residential and commercial components of the project (including partitions, structural slabs, doors, columns, stairways, and mechanical rooms)

provided that the variations do not change the exterior configuration of the buildings, as necessary to comply with all applicable codes or as required to obtain a final building permit.

b) To make minor adjustments:

- 1) in the facade, window and cornice detailing of the residential and retail components of the project, including, but not limited to, the flexibility to shift the location of the doors to the retail uses;
 - 2) in the appearance of the retail frontage in order to accommodate different retailer demands;
 - 3) in the type of exterior lighting fixtures;
 - 4) in the location and appearance of all signage for the project provided that such signage shall be consistent with the character of Exhibit 4;
 - 5) in the final selection of exterior building materials, based on availability at time of construction;
 - 6) in the species of plant material used in any landscaping on the subject site; and
 - 7) in landscaping and paving details to accommodate utilities and retailer requirements.
26. Thirty days after completion of the project and the underground parking facility, the through-block connector shall be used by the applicant for its intended purpose, and no other purpose.
27. The applicant and other owners in Square 1661 have the flexibility to cooperate with each other in a good faith effort to resolve any problems which may result from coordination, construction and implementation of the through-block connector and the pedestrian connection to the Metro station.
28. The applicant shall have the flexibility to make minor revisions to the plans to resolve problems which may stem from construction elements which physically relate to the

other developments in Square 1661, to ensure final and proper coordination.


29. No building permit shall be issued for the modified site until the applicant has recorded a "Notice of Modification" of Z.C. Order Nos. 528, 528-B, 528-C, and 528-D in the land records of the District of Columbia. That Notice of Modification shall include a copy of Z.C. Order Nos. 528, 528-A, 528-B, 528-C, and 528-D that the Director of the Office of Zoning has certified as true copies. The Notice of Modification shall also bind the applicant and successors in title to construct on and use this PUD site in accordance with the order in this case or any amendments thereof.
30. After recordation of said Notice of Modification, the applicant shall immediately file a certified copy of the Notice of Modification with the Office of Zoning for the records of the Zoning Commission.
31. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of Department of Consumer and Regulatory Affairs (DCRA) until the applicant has satisfied the conditions contained in paragraphs 28 and 29.
32. The PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in 11 DCMR 2409.1. Construction shall start within three years of the effective date of this order.
33. Pursuant to D.C. Code Section 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicants are required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38 as amended.

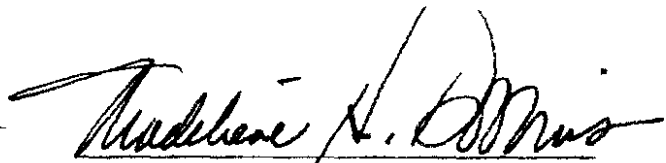
Vote of the Zoning Commission taken at its public meeting on April 14, 1997: 3-0 (Jerrily R. Kress Herbert M. Franklin, Maybelle Taylor Bennett to approve, John G. Parsons, not voting, not having participated in the case).

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The order was adopted by the Zoning Commission at its public meeting on July 14, 1997, by a vote of 3-0: (Jerrily R. Kress and Maybelle Taylor Bennett to adopt; Herbert M. Franklin to adopt by absentee vote; John G. Parsons, not voting, not having participated in the case).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is on JUL 25 1997.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning

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